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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PATRICIA KOHLER, Individually and as
Personal Representative, etc.,

Plaintiff and Appellant,

v.

KINDRED NURSING CENTERS WEST,
LLC, et al.

Defendants and Respondents.

D053827

(Super. Ct. No. 37-2008-00052632-
CU-PO-NC)

APPEAL from an order of the Superior Court of San Diego County, Michael B.
Orfield, Judge. Affirmed.

Beatrice McKim died after spending several weeks at a 24-hour skilled nursing facility, operated by Kindred Nursing Centers West, LLC ("Village Square"). McKim's daughter, Patricia Kohler, brought an action against Village Square, and several other defendants, including a separate corporate entity identified as Kindred Healthcare, Inc.

Kindred Healthcare, Inc. successfully moved to quash the service of the summons based on the lack of personal jurisdiction. Kohler appeals. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2007, McKim was admitted to Village Square, a skilled nursing facility in San Marcos, California, for rehabilitation after ankle surgery. Village Square employees thereafter allegedly failed to provide rehabilitative therapy or monitor McKim's surgical site. About three weeks after McKim was admitted, a nursing student allegedly gave McKim the wrong medications. McKim's health then "sharply declined," and three days later McKim was found in her bed unresponsive and not breathing. McKim died shortly after being transported to the hospital.

McKim's daughter, Kohler, in her individual capacity and as McKim's personal representative, filed an amended complaint against several defendants, including Village Square, Kindred Healthcare, Inc., and Kindred Healthcare Operating, Inc. The complaint alleged negligence, elder abuse, and numerous other claims. With respect to the liability of the latter two defendants, Kohler alleged: "Upon information and belief . . . defendant *Kindred Healthcare, Inc.*, was, and still is, the business owner and investing holder of the legal entity formed to operate [Village Square], which conducts business in the State of California as a 24-hour skilled nursing facility [¶] . . . Upon information and belief, at all times mentioned herein, defendant *Kindred Healthcare Operating, Inc.*, was, and still is, the controlling entity operator and management company that controls and governs the operations of [Village Square], the 24-hour skilled nursing facility" (Italics added.)

Kindred Healthcare, Inc. moved to quash the service of summons based on the lack of personal jurisdiction. In support, Kindred Healthcare, Inc. produced a declaration of Jeremy Ballard, counsel for Kindred Healthcare Operating, Inc., who said he is familiar with Kindred Healthcare, Inc.'s corporate structure based on his "capacity as Corporate Counsel for Kindred Healthcare Operating, Inc." According to Ballard, Kindred Healthcare, Inc. is a holding company, incorporated in Delaware with its principal place of business in Kentucky, and has no contacts with California.

Specifically, Ballard said Kindred Healthcare, Inc.: (1) does not transact or participate in any business within California; (2) has never maintained an office in California; (3) does not own property in California; (4) has never held a bank account at any depository institution in California; (5) has never incurred or paid taxes in California; (6) is not, and has never been, registered to do business in California; (7) has no appointed registered agent for service of process in California; (8) was served with a summons in Kentucky; (9) does not itself own or operate any skilled nursing facilities in California; (10) does not provide any care or treatment to any patient in California; and (11) has not consented to jurisdiction in California.

In opposition to the motion, Kohler argued that Kindred Healthcare, Inc. has sufficient contacts with California to establish a basis for general and/or specific jurisdiction. In support, Kohler submitted her counsel's declaration which attached documents that her attorney said were "true and correct copies of web pages from Kindred Healthcare, Inc.'s website—<http://www.kindredhealthcare.com>" The attached documents contain references primarily to "Kindred Healthcare" or "Kindred"

rather than "Kindred Healthcare, Inc.," but in at least two instances, the name "Kindred Healthcare, Inc." is used. Kohler argued that these documents establish that Kindred Healthcare, Inc. manages and operates Kindred health care facilities throughout the country, including Village Square in California. Kohler also argued that these documents show the existence of an "interactive" website map and job opportunities list, establishing that Kindred Healthcare, Inc. has purposefully directed its activities into California.

Kohler's counsel also attached to his declaration a copy of a letter on "Kindred Hospital" letterhead, signed by a senior vice-president of "Kindred Healthcare Inc." Kohler's counsel declared: "Exhibit E is a true and correct copy of a letter from Kindred Healthcare, Inc. to an employee in California, Heather Erb. This was an exhibit in the case of *Heather R. Erb v. Kindred Hospital San Diego, et al.* . . . As declared by Heather Erb, this letter was from the Senior Vice President of Kindred Healthcare, Inc., and was regarding the termination of her employment with Kindred Healthcare, Inc." Kohler's counsel also attached a copy of what he said was an "envelope from Kindred Healthcare, Inc. to . . . Heather Erb. This was an exhibit in the [Erb litigation] As declared by plaintiff Heather Erb in that matter, this is a true and correct copy of the outside of one of her many paychecks showing that mailing information."

Kohler also requested the court to take judicial notice of a minute order in the Erb litigation, in which the superior court ruled that the evidence presented supported the existence of specific jurisdiction over Kindred Healthcare, Inc.

Kindred Healthcare, Inc. filed evidentiary objections to Kohler's evidence. With respect to the website pages, Kindred Healthcare, Inc. objected on the basis of hearsay

and lack of authentication, contending that Kohler did not present proof that the www.kindredhealthcare.com website is the domain for Kindred Healthcare, Inc., or that "the statements contained within the website are that of Kindred Healthcare, Inc." Kindred Healthcare, Inc. claimed the printouts were not Kindred Healthcare, Inc. documents, and instead were printed from a website owned and maintained by a different entity, "Kindred Healthcare." Kindred Healthcare, Inc. further reiterated that it is only a holding company, and not an operating company: "[Kindred Healthcare, Inc.] holds the stock in its subsidiaries. It does not itself operate anything and certainly does not OPERATE facilities such as Skilled Nursing Facilities like Village Square."

Kindred Healthcare, Inc. also asserted hearsay, lack of authentication, and relevance objections to the Erb letter and envelope. With respect to the letter, Kindred Healthcare, Inc. argued that Kohler did not establish "from where the document came, whether the document is in its complete and accurate form. There is no credible evidence of the author of this document, when the document was drafted and for what purpose. There is no evidence to establish who sanctioned or approved the document. There is no evidence that the document was maintained in the ordinary course of business by the custodian of the original records. There is no evidence of the reliability of the information within the record. . . ."

Kindred Healthcare, Inc. additionally submitted copies of five unrelated orders from other California superior courts, in which each court granted Kindred Healthcare, Inc.'s motion to quash service of a summons. Kindred Healthcare, Inc. also requested the court to take judicial notice of a document from the California Secretary of State

indicating that Village Square, and not Kindred Healthcare, Inc., is the entity holding the license to operate and maintain the nursing facility.

In its tentative ruling, the court sustained Kindred Healthcare, Inc.'s evidentiary objections in their entirety. At the hearing on the motion, Kohler's counsel argued that the computer printouts were properly authenticated through his declaration "as an officer of this court indicating that my firm itself generated those computer printouts off of Kindred Healthcare, Inc.'s corporate website" The court rejected this argument, stating Kohler presented no foundational information to substantiate that the computer printout pages reflected Kindred Healthcare, Inc.'s actual website, and there were numerous additional authentication problems with the content on the submitted pages.

In its final order, the court ruled Kohler failed to properly authenticate the proffered documents. The court also stated that it did not "consider[] the rulings of other trial courts on the grounds that they lack precedential value or are otherwise inapposite to the case at bar." The court granted Kindred Healthcare, Inc.'s motion to quash, finding Kohler "failed to provide the court with admissible evidence sufficient to establish" a basis for personal jurisdiction.

Kohler appeals.

DISCUSSION

I. Personal Jurisdiction Legal Principles

Under Code of Civil Procedure section 410.10, the jurisdiction of California courts extends ""to the outermost boundaries of due process"" guaranteed by the United States Constitution. (*Pedus Building Services, Inc. v. Allen* (2002) 96 Cal.App.4th 152, 162.)

""The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' . . . By requiring that individuals have 'fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign,' . . . the Due Process Clause 'gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'"" (Ibid.)

Under these principles, it is well settled that a subsidiary's contacts with a state are insufficient to subject the parent or holding company to the jurisdiction of the state. (*HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160, 1169; *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 545.) Instead, the plaintiff must show the parent itself has sufficient contacts with the state to show the requisite minimum contacts to comply with due process or that the parent's control over the subsidiary is "*so pervasive and continual that the local subsidiary functions as an agent.*" (*Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 577.)

When a defendant moves the trial court to quash service of process for lack of personal jurisdiction, the plaintiff has the initial burden of proving that sufficient contacts exist between the defendant and California to justify the exercise of personal jurisdiction. (*Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.) This burden must be met by competent and admissible evidence in affidavits and authenticated documents. (See *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110; *Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1233;

Judd v. Superior Court (1976) 60 Cal.App.3d 38, 43-44.) An unverified complaint is insufficient. (*Ziller, supra*, 206 Cal.App.3d at p. 1233.) If the plaintiff satisfies this burden, the burden shifts to the defendant to demonstrate that the assumption of jurisdiction would be unreasonable. (*Snowney, supra*, 35 Cal.4th at p. 1062; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273.)

II. Analysis

The court found Kohler did not meet her initial burden of showing sufficient contacts between Kindred Healthcare, Inc. and California because her supporting evidence was inadmissible. Specifically, the court found the website pages were not properly authenticated; there was no proper foundation for the admission of the Erb letter and envelope; and the Erb litigation minute order was irrelevant. Kohler contends the court abused its discretion in reaching these conclusions.

A. Internet Website Pages

"Authentication of a writing is required before it may be received in evidence." (Evid. Code,¹ § 1401, subd. (a).) "Authentication" means "(a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such facts by any other means provided by law." (§ 1400.) These authentication rules apply to computer printouts. (*Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 195; see also *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.* (2003) 106 Cal.App.4th

¹ All further statutory references are to the Evidence Code.

1219, 1238.) A trial court's finding on whether there are sufficient foundational facts to support admissibility is reviewed for abuse of discretion. (*People v. Lucas* (1995) 12 Cal.4th 415, 466; *Molenda v. Department of Motor Vehicles* (2009) 172 Cal.App.4th 974, 999-1000.)

Kohler presented numerous pages that appeared to be printouts of a website found at an Internet address "kindredhealthcare.com." Kohler also submitted her counsel's declaration stating that these pages were "true and correct copies of web pages from Kindred Healthcare, Inc.'s website." But Kohler did not present any evidence showing the website was in fact created by Kindred Healthcare, Inc., or that the statements on the printouts were made by persons authorized to speak for Kindred Healthcare, Inc. This information was essential to authenticate the information as statements of Kindred Healthcare, Inc., i.e., that the documents were what they purported to be. (See § 1400.) The record shows that there are various corporate entities sharing the "Kindred Healthcare" name, and it is not clear which entity, if any, maintained the website from which the submitted pages were printed.

Relying on section 1552, subdivision (a), Kohler argues the website printout pages were "'self-authenticating.'"² Under section 1552, a party who submits a printout from a website is entitled to a presumption that the document is an accurate copy of what was on the computer screen at the time it was printed. (§ 1552, subd. (a).) But there is nothing in this code section allowing a party to avoid the independent authentication requirement. Thus, although the printouts may be accurate *copies* of what was on the computer screen, Kohler was also required to present evidence that this information was prepared and generated by Kindred Healthcare, Inc. As explained in *People v. Hawkins* (2002) 98 Cal.App.4th 1428, the "presumption [in section 1552] operates to establish only that a computer's print function has worked properly. The presumption does not operate to establish the accuracy or reliability of the printed information." (*Id.* at p. 1450; see also *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, *supra*, 106 Cal.App.4th at p. 1238.)

This conclusion is supported by section 1552's location in the Evidence Code. The authentication rules are contained in Division 11, Chapter 1, entitled "Authentication and

² Section 1552, subdivision (a) states in relevant part: "A printed representation of computer information . . . is presumed to be an accurate representation of the computer information . . . that it purports to represent. This presumption is a presumption affecting the burden of producing evidence. If a party to an action introduces evidence that a printed representation of computer information . . . is inaccurate or unreliable, the party introducing the printed representation into evidence has the burden of proving, by a preponderance of evidence that the printed representation is an accurate representation of the existence and content of the computer information . . . that it purports to represent."

Because Kohler's counsel referred to this code section at the hearing, we reject Kindred Healthcare, Inc.'s argument that Kohler waived the issue.

Proof of Writings." This chapter sets forth the general rules requiring authentication (§§ 1400, 1401), the means of authentication (§§ 1410-1421), and the various presumptions affecting the burden of producing evidence to authenticate a writing (§§ 1450-1452). Section 1552 is not contained in this chapter. Instead, it is located in Chapter 2 of Division 11 which sets forth the manner in which a party proves the content of a writing through an original or a copy. Section 1552 was enacted in 1998 to continue without substantive change former Section 1500.5, subdivision (c), which specifically pertained to the former "Best Evidence Rule" (now the "Secondary Evidence Rule"). (Cal. Law Revision Com. com., 29B West's Ann. Evid. Code (2010 Supp.) foll. § 1552, p. 157.) The secondary evidence statutes specifically provide that these rules do not relieve a party from compliance with authentication requirements. (§ 1521, subd. (c).) Accordingly, section 1552, subdivision (a) does not create an authentication presumption, and instead is a specific application of the rule that a copy is valid to prove the original in most circumstances. (See also § 255 [accurate computer printout is an "'original'"].)

To support the admissibility of the website printouts, Kohler relies on a footnote in *Ampex Corp v. Cargle* (2005) 128 Cal.App.4th 1569, wherein the court stated that the lower court had erred in ruling inadmissible website printouts attached to defense counsel's declaration. (*Id.* at pp. 1573-1574, fn. 2.) The court noted that computer printouts from the plaintiff corporation's website were "self-authenticating" under section 1552, subdivision (a). (*Ampex, supra*, at pp. 1573-1574, fn. 2.) However, these statements were dicta because the court found the defendant had not preserved his challenge to the court's evidentiary ruling. (*Ibid.*) In light of the lack of any analysis by

the court, we find the language in the *Ampex* footnote unpersuasive and inapplicable to the circumstances here.

Kohler's reliance on *Perfect 10, Inc. v. Cybernet Ventures, Inc.* (C.D.Cal. 2002) 213 F.Supp.2d 1146 is also misplaced. In that case, many of the computer printouts were provided by the party that was objecting to the lack of authenticity and/or were from the producing party's website. In addition, the court emphasized that it was applying a "reduced evidentiary standard" applicable in preliminary injunction motions. (*Id.* at p. 1154.) These circumstances are not similarly present here.

Kohler argues her counsel's declaration was sufficient to authenticate the printouts because he stated that the documents were from Kindred Healthcare, Inc.'s website. Kohler maintains that it is not necessary to have actually created the website to declare its authenticity. We agree that the person who created a website is not the only person who can establish the authenticity of the website information. But the court did not abuse its discretion in concluding that the evidence presented in this case was insufficient. Counsel's conclusory statement that the printouts were "from Kindred Healthcare Inc.'s website" was insufficient to show that he had any personal knowledge to support counsel's assertion. This is particularly true in light of the numerous entities that appear to share the "Kindred" name. Although the website pages referred twice to Kindred Healthcare, Inc., there were also many other references to "Kindred Healthcare" and to "Kindred."

To the extent Kohler suggests there were no other means to establish the authenticity of the website information, this argument is unconvincing. A plaintiff has

the right to conduct discovery to develop the facts necessary to establish a basis for personal jurisdiction. (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710.) Further, a trial court has the discretion to continue a hearing on a motion to quash to allow the plaintiff to conduct discovery on jurisdictional issues. (*HealthMarkets, Inc. v. Superior Court, supra*, 171 Cal.App.4th at p. 1173; *Goehring v. Superior Court* (1998) 62 Cal.App.4th 894, 911.) If Kohler had sought this discovery or requested a continuance, she could have obtained the necessary information through an interrogatory, request for admission, or a deposition of a party with knowledge of the website.

B. *Erb Documents*

Kohler additionally contends the court erred in sustaining Kindred Healthcare, Inc.'s evidentiary objections to the Erb documents (the letter, envelope, and minute order).

The court's ruling was a proper exercise of discretion. The letter is on "Kindred Hospital" stationary discussing Erb's separation from the "Company." The signature line on the letter reads "Sincerely, [¶] Kindred Healthcare, Inc.," and is signed by the "Sr. Vice President of Human Resources, HD [¶] Kindred Healthcare." In his declaration, Kohler's counsel stated that the letter was a "true and correct copy" of a letter from Kindred Healthcare, Inc. to Heather Erb. Counsel also referred to Erb's declaration, but he did not submit Erb's declaration in support of his jurisdiction arguments. This information was insufficient to show counsel had personal knowledge to authenticate the document. Moreover, although Kohler argues that the documents contain Kindred Healthcare, Inc.'s trademark, it is not clear from the evidence that this is correct. The

letter is on "Kindred Hospital San Diego" letterhead, not the letterhead of Kindred Healthcare, Inc.

We similarly conclude the court did not err in excluding the evidence of the copy of the envelope addressed to Erb. Counsel had no personal information that the envelope was what he said it was—an envelope that once contained Erb's paycheck.

Finally, the court did not err in concluding that the minute order in the Erb litigation was not relevant to the issues before it. In the prior minute order, the superior court found the plaintiff (Heather Erb) produced sufficient evidence for "specific personal jurisdiction" which requires a plaintiff to present evidence that the defendant purposefully availed itself of forum benefits *and the controversy is related to or arises out of defendant's contacts with the forum*. (See *Pavlovich, supra*, 29 Cal.4th at p. 269.) Because the controversy in that case (wrongful termination by an entity identified as Kindred Hospital) is different from the dispute here (e.g., alleged negligence, elder care abuse, and fraud committed by Village Square), the court properly concluded that the Erb ruling as to specific jurisdiction was not relevant to the jurisdictional issue in this case.

Kohler argues the Erb minute order was relevant to "traditional notions of fair play and substantial justice since Kindred Healthcare was already involved in defending at least one other matter in California." However, a court does not reach this issue until the plaintiff has established the minimum contacts necessary to meet due process. (See *Snowney, supra*, 35 Cal.4th at p. 1062.) Kohler never met that burden in this case.

The record supports the court's conclusion that there was no competent evidence showing Kindred Healthcare, Inc. had any contacts with California. We thus conclude the court properly granted Kindred Healthcare, Inc.'s motion to quash.

DISPOSITION

Order affirmed. The parties to bear their own costs.

HALLER, Acting P. J.

WE CONCUR:

O'ROURKE, J.

IRION, J.